

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)
)
RCP Investments VI, LLC,) Case No. 11-81357C-11D
)
Debtor.)

OPINION AND ORDER

This case came before the court on November 15, 2012, for hearing on Debtor's Emergency Motion for Approval of Private Sale of Residential Real Property ("Motion") and an objection to the Motion filed by TD Bank, N.A. Philip W. Paine appeared on behalf of the Debtor and Paul A. Fanning appeared on behalf of TD Bank, N.A.

The Debtor is the owner of real property located on Northernway Court in Durham, North Carolina. The property is subject to a deed of trust securing indebtedness owed to TD Bank. The Motion requests that the court authorize the sale of the Northernway Court property for a price of \$185,000 free and clear of liens and transfer liens to the proceeds of sale. This relief is sought pursuant to section 363(f) of the Bankruptcy Code.

A Plan of Liquidation was confirmed in this chapter 11 case on July 10, 2012. Although the confirmed Plan contains provisions dealing with the manner in which the Debtor's real estate is to be liquidated, the Debtor now seeks to ignore the Plan and proceed under section 363(f). Having negotiated and agreed to the Plan treatment for TD Bank and obtained confirmation of the consensual

Plan of Liquidation, the Debtor is bound by the terms of the Plan and may not resort to section 363 for relief that is contrary to the terms of the Plan. Otherwise, the Plan is illusory and the confidence of creditors and other parties in interest regarding the chapter 11 process would be undermined.

The treatment under the Plan for TD Bank's undisputed secured claim includes the following provision:

Except as provided in Section 7.06 below, TD Bank shall have the right to approve or disapprove the terms of any sale of Debtor's real property if such a sale does not fully satisfy TD Banks's allowed Class 2 claim.


Section 7.06 of the Plan is entitled "Sale Price" and provides that "[b]y a separate agreement, Debtor and TD Bank have agreed on a pricing strategy of Debtor's real property as consideration for TD Bank's support of this Plan." This agreement established sales prices at which TD Bank agreed Debtor's properties could be sold.

It is undisputed that the \$185,000 sale price referred to in the Motion will not fully satisfy TD Bank's allowed secured claim and also is below the price specified in the agreed upon pricing strategy referred to in Section 7.06. Thus, under the terms of the Debtor's confirmed Plan, TD Bank has the right to approve or disapprove the proposed sale. TD Bank has declined to approve the sale and is within its rights to do so under the Debtor's confirmed Plan. Confirmation having occurred, section 363 may not be invoked post-confirmation in order to proceed in a manner contrary to the

terms of the confirmed Plan.¹ See In re Golf, L.L.C., 322 B.R. 874, 877 (Bankr. D. Neb. 2004) ("Section 363(f) is used by a debtor-in-possession during the pendency of a bankruptcy case and before confirmation. . . . Post-confirmation sales of assets are accomplished pursuant to the terms of the confirmed plan. . . .").

In accordance with the foregoing discussion, the Debtor's motion shall be and hereby is overruled and denied.

This 16th day of November, 2012.



WILLIAM L. STOCKS
United States Bankruptcy Judge

¹Having concluded that section 363 may not be invoked, the court need not address whether the proposed sale is one that could be approved under section 363(f).

Parties to be Served

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